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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

4 September 2020

Case Document No. 2

Associação Sindical dos Profissionais da Polícia (ASPP/PSP) v. Portugal
Complaint No. 179/2019

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

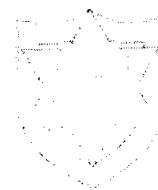
Registered at the Secretariat on 24 July 2020

POLÍCIA SEGURANÇA PÚBLICA

DIREÇÃO NACIONAL

DIRETOR NACIONAL

Gabinete Assuntos Jurídicos



Para (TO): Ex.ma Senhora Diretora de Serviços
Direção de Serviços de Assessoria Jurídica,
Contencioso e Política Legislativa
Praça do Comércio, Ala Oriental, Piso 3
1149-015 Lisboa

Sua Referência:

Sua Comunicação:

Nossa Referência: 277/GAJ/2020

Classificador: 040.01.02

Processo:

Data: 2020-06-26

Subject: Police Trade Union (ASPP/PSP) v. Portugal Complaint 179/2019

On the subject above and because it was informally requested by the The National Director Office, the Public Security Police (PSP) Office for Legal Affairs shall pass their judgment on the complaint identified above.

Therefore, according to the complaint, the PSP says that it is, essentially, related to the service commission expiry of the police officer M/148836, Paulo Jorge Marques Gonçalves, in the deployed force of the *Unidade Especial de Polícia*- UEP- (Special Police Unit) in Faro.

And, in fact, on the 2nd December 2014, by Official Communication UEP/NRH/1792, the UEP Commander informs the Human Resources Department of the PSP National Directorate on the renewals of the service commissions in the UEP.

In that same Official Communication, there was also a list of the officers to whom the service commission has not been renewed, where is the name of the officer to whom the complainant refers to.

Due to this fact, the Police Trade Union, representing the aforementioned police officer, brought a precautionary measure before the Administrative Court of Lisbon, which would order the requested suspension of the effectiveness of that Resolution.

PSP, not content with the adoption of that measure, appealed to the Central South Administrative



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Court, which, by Judgment 14/05/2015, upheld the decision of the previous Court.

Continuing the PSP, not to conform to the decision, a review appeal was brought, from this last judgment, to the Supreme Administrative Court (STA).

Subsequently, it shall be mentioned that the STA, in a preliminary judgment admitting the review as well as the Opinion of the Public Prosecutor's Office before this Court, would raise the question, leading the way for the STA Judgment of 25th November 2015, in Appeal 853/15 – Motion to the Review of the TCA Judgments – Process 2 3007/14.7BELSB –that fully upheld of the appeal and revoked the previous judicial decision, deeming totally unfounded the precautionary claim and refusing, this way, the requested measure. However, main action 770/15.1BELSB has not been judged yet and it is still pending before the Administrative Court Lisbon.

In that precautionary proceeding, the PSP argued, among other issues, that Resolution 2/12/2014 of the Special Police Unit Commander, whose effectiveness was endangered by the complainant, was exclusively intended, in regulatory terms, to communicate the cases of renewal of service commission and not the cases of non- renewal of service commissions that ceased for the natural course of time without being extended.

And that the complainant's service commission ceased by expiry, due to its conclusion, previously and naturally defined by its beginning.

That is, it was indeed the natural consequence of the service commission conclusion due to the mere course of time, in accordance with the provisions of Article 73 of the PSP Statute, approved by Decree-Law 299/2009, 14th October (EPPSP), then in force, the provisions of Article 13, paragraph 1 and 2, Article 15, paragraph 1 of the Recruitment, Assignment and Service system regarding the Special Police Unit (RRCPSUEP), published in Internal Communication 70, II Part, 23rd April, 2010 of the National Directorate of the PSP.

The fact that the service commission was not extended or renewed was the result, not of an arbitrary or even discretionary act of the administration, but the result of the strict compliance with the applicable legal and regulatory rules, since the UEP Commander could only extend the Service Commission if there was a proposal for an extension under the regulatory terms.

In other words, the institute of the service commission in the UEP is characterized, among us, by the precariousness, by the transience of the type of functions to be performed, allowing to meet, this way, certain and specific needs, such as temporary filling certain vacancies, which by several reasons cannot be filled for a lifetime period.

On the other hand, since there was not any proposal for an extension, the UEP Commander could not



extend the commission.

In short, the service commission ceased because it came to an end, because there was no proposal for an extension by the direct commander of the police officer, here represented, and without this proposal for an extension, the service commission could not be extended.

Therefore, that non-extension was not nor could be motivated by any fact relating to the quality of the police officer, here represented, within the trade union structure or any other structure.

This is because PSP merely applied the rules applicable to the specific case as an element of the FD/UEP/FARO.

On the other hand, as part of the trade union structure, the police officer mentioned here has never seen himself deprived of his rights, because PSP complies, as it could not fail to do, with the existing legislation in Portugal on the exercise of trade-union freedom, as well as treaties and ratified conventions.

Director of the Office for Legal Affairs



Antonino Pinto Salgueiro

Técnico Superior

